D. M. YATES

IBLA 82-1010 Decided January 25, 1983

Appeals from decisions of the Oregon State Office, Bureau of Land Management, rejecting in part oil and gas lease offers OR 26061, OR 26648, and OR 26649, and rejecting in its entirety OR 26075.

Vacated and remanded.

1. Fish and Wildlife Coordination Act -- Fish and Wildlife Service -- Oil and Gas Leases: Lands Subject to -- Wildlife Refuges and Projects: Leases and Permits

   An over-the-counter offer for an oil and gas lease on lands within a game range or on coordination lands may not be summarily rejected under 43 CFR 3101.3-3(a) applicable to wildlife refuge lands. Subsections 3101.3-3(b) and (c) require that BLM confer with representatives of the U.S. Fish and Wildlife Service at a minimum before an offer can be rejected.

APPEARANCES: D. M. Yates, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

D. M. Yates appeals from four decisions of the Oregon State Office, Bureau of Land Management (BLM), dated June 3, 11, and 14, 1982, rejecting in part over-the-counter offers to lease for oil and gas OR 26061, OR 26648, and OR 26649, and rejecting in its entirety offer OR 26075. BLM rejected these offers because appellant sought to lease land within the boundaries of the National Wildlife Refuge System. The decision stated that wildlife refuge lands are exempt from oil and gas leasing under 43 CFR 3101.3-3(a) except when these lands are subject to drainage; in the event of drainage, leases will be offered only under competitive bidding.

Our review of the record reveals that offer OR 26061 describes lands within the Colockum Game Range. On December 18, 1967, lands included within OR 26061 were added to the existing Colockum Game Range by Public Land Order (PLO) No. 4339, 32 FR 20775 (Dec. 23, 1967). This order stated in part:

> By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), it is ordered as follows:
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> 1. Subject to valid existing rights, the following described public lands which are under the jurisdiction of the Secretary of the Interior, are hereby withdrawn from all forms of appropriation under the public land laws, including the mining laws (30 U.S.C., Ch. 2), but not from leasing under the mineral leasing laws, and reserved for management in cooperation with the State of Washington as an addition to the existing Colockum Game Range:
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> 2. Upon execution of a cooperative agreement with the Secretary of the Interior or his delegate, the State of Washington is authorized to manage the lands for the conservation of wildlife, consistent with Federal programs for the management of the lands.
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> 3. The withdrawal made by this order does not alter the applicability of the public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws. However, leases, licenses, contracts, or permits will be issued only if the proposed use of the lands will not interfere with the proper management of the Colockum Game Range.

Offer OR 26075 described lands within PLO 1054, issued January 18, 1955, reserving lands under the jurisdiction of the Department of the Interior for use by the Department of Game, State of Washington, in connection with the Colockum Game Range. 20 FR 548 (Jan. 25, 1955). this order used language substantially similar to that in PLO 4339 in withdrawing the lands described therein "from all forms of appropriation under the public-land laws, including the mining laws but not the mineral-leasing laws."

Offers OR 26648 and OR 26649 described lands in the Lenore Game Range withdrawn by PLO 1249 on November 7, 1955. 20 FR 8471 (Nov. 15, 1955). As above, lands in PLO 1249 were withdrawn "from all forms of appropriation under the public-land laws, including the mining but not the mineral-leasing laws and reserved under the jurisdiction of the Department of the Interior for use by the Department of Game of the State of Washington as the Lenore Game Range."

Appellant maintains that the lands in his four offers are leasable for oil and gas because the aforementioned public land orders did not withdraw these lands from appropriation under the mineral leasing laws. No evidence of drainage exists, appellant states, requiring leasing under regulations for competitive leasing. In appellant's view, leases with protective stipulations should be granted to the first-qualified applicant.

[1] The regulation cited by BLM, 43 CFR 3101.3-3(a)(1), provides, in relevant part, that "[n]o offers for oil and gas leases covering wildlife refuge lands will be accepted and no leases covering such lands will be issued except as provided in § 3101.3-1 [lands subject to drainage]." "Wildlife refuge lands" are defined as follows:

> Wildlife refuge lands. Such lands are those embraced in a withdrawal of public domain and acquired lands of the United States for the protection of all species of wildlife within a particular area. Sole and complete jurisdiction over such lands for wildlife conservation purposes is vested in the U.S. Fish and Wildlife Service even though such lands may be subject to prior rights for other public purposes or, by the terms of the withdrawal order, may be subject to mineral leasing.

By the terms of 16 U.S.C. § 668 dd(a) (1976), game ranges are expressly included in the "National Wildlife Refuge System." 1/ By regulation 50 CFR 25.12, the term "national wildlife refuge" is defined to mean "any area of the National Wildlife Refuge System except wildlife management areas."

BLM, however, appears to have overlooked 43 CFR 3101.3-3(b), a regulation specifically dealing with oil and gas leasing in game ranges, and 43 CFR 3101.3-3(c), a regulation dealing with coordination lands. It is unclear from the record if the lands at issue are coordination lands. 2/ In either case, however, the decision to lease for oil and gas is not BLM's alone. Subsection 3101.3-3(b)(1) requires that representatives of BLM and the U.S. Fish and Wildlife Service confer for the purpose of entering into an agreement specifying those lands not subject to leasing. This agreement shall not be effective until approved by the Secretary. Lands not closed to leasing will be subject to stipulations agreed upon by BLM and the U.S. Fish and Wildlife Service. Leasing in coordination lands under subsection 3101.3-3(c) imposes similar, but not identical, requirements on BLM. Under subsection 3101.3-3(c)(1), BLM and the U.S. Fish and Wildlife Service will, in cooperation with the authorized members of various State game commissions, confer for the purpose of determining by agreement those lands not subject to oil and gas leasing. Lands not closed to oil and gas leasing will be subject to

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1/ Regulation 50 CFR 25.12 curiously omits any reference to game ranges in its list of areas within the National Wildlife Refuge System. Proposed rules, found at 40 CFR 12270 (Mar. 18, 1975) and later adopted in substantial part as 50 CFR 25.12, specifically included game ranges within the National Wildlife Refuge System. See Kenneth F. Cummings, 43 IBLA 110, 114 (1979), for a discussion of other apparent conflicts in the regulations.

2/ Coordination lands are lands withdrawn or acquired by the Government and made available to the states by, inter alia, cooperative agreements entered into between the U.S. Fish and Wildlife Service and the game commissions of the various states in accordance with the Act of Mar. 10, 1934, as amended, 16 U.S.C. § 661 (1976). 43 CFR 3101.3-3(c). We note that paragraph 2 of PLO 4339 speaks of a prospective "cooperative agreement" between the Secretary and the State of Washington.

leasing on the imposition of such stipulations agreed upon by the State Game Commission, the U.S. Fish and Wildlife Service, and BLM.

BLM's decisions of June 3, 11, and 14, 1982, are vacated. The case files are remanded to the State Office for its determination whether subsection 3101.3-3(b) or 3101.3-3(c) is applicable to the lands at issue. Upon this determination, BLM shall confer with the appropriate officials as per regulation.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the State Office are vacated and the cases remanded for action consistent herewith.

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Anne Poindexter Lewis
Administrative Judge

We concur:

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C. Randall Grant, Jr.
Administrative Judge

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Bruce R. Harris
Administrative Judge